(3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CG)

WRIT PETITION NO.3584 OF 2004

BETWEEN

Moti Ram Sahu S/o Late Pooran Sahu, aged about 62 years, R/o Village Sankara, Tehsil Bhamtari, District Bhamtari, (CG).

F.K. No. 3584/04
Presented by Shri Alok Pandey
dated 28-9-04

PETITIONER

AND

1. The State of Chhattisgarh, through the Secretary, Department of Revenue, Mantralay, D.K.S. Building, Raipur (CG).

2. The Board of Revenue, Chhattisgarh, Through its President, Bilaspur (CG).

3. The Collector, Bhamtari, District Bhamtari (CG).

4. The Naib Tehsildar, Bhamtari, District Bhamtari (CG).

5. Bansi Lal S/o Puran Sahu, r/o Village Sankra, Tehsil and District Bhamtari (CG).

6. Awadh S/o Puran Sahu, resident of Village Sankra, Tehsil and District Bhamtari.

7. Raimun Bai W/o Puran Sahu, resident of Village Sankra, Tehsil and District Bhamtari (CG).

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Clerk to A.G. Bilaspur

RESPONDENTS

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA

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HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.3584 of 2004

Moti Ram Sahu

- Versus -

State of Chhattisgarh and others

POST FOR ORDER ON 3rd DECEMBER, 2004

Sd/-
L.C. Bhadoo
Judge

(33)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.3584 of 2004

Moti Ram Sahu

- Versus -

State of Chhattisgarh and others

Present: -

Smt. Renu Kochar, Advocate:	For the petitioner.
Shri Sanjay S. Agrawal, Govt. Advocate:	For the State.

ORDER

(Passed on 3rd December, 2004)

L.C. BHADOO, J.

1. The petitioner has preferred this writ petition under Article 227 of the Constitution of India, questioning the correctness and legality of the order dated 21st July, 2004, passed by the Board of Revenue, Chhattisgarh at Bilaspur, rejecting the revision and affirming the order of the Collector, Dhamtari, whereby the Collector, Dhamtari vide order dated 7.8.2003 rejected the revision filed before him against the order of the Naib Tehsildar, Dhamtari dated 13.6.2003, whereby the learned Naib Tehsildar asked the Halka Patwari to send his report and the matter was fixed for evidence.

2. Brief facts leading to filing of this writ petition are that the petitioner herein and respondents No.5 & 6 herein are real brothers, respondent No.7 is their mother, and they have joint family, agricultural land situated at Village: Sankra, Patwari Halka No.44, Tehsil & District: Dhamtari and at Village: Kandel, Patwari Halka No.43, total area of 15 acres in six different Khata numbers. Respondents No.5 to 7 herein have filed a petition before the Naib Tehsildar: Dhamtari for partition of their joint family property. During the proceedings some orders were passed against which the petitioner filed a revision before the Collector and went upto the Revenue Board and the Revenue Board vide its order dated 21st August, 2002, reached the conclusion that the subordinate Courts have not passed reasoned order, in accordance with law, therefore, remitted the matter to the Tehsildar with directions that after giving

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opportunity of hearing to both the parties decide the points raised by both the parties with a reasoned order, in accordance with law. Accordingly, the matter again came to the Naib Tehsildar and when the Naib Tehsildar started taking evidence, the petitioner raised a point that one tractor trolley was purchased after taking loan from the Bank and mortgaging the joint property in favour of the Bank, and the said loan is also still outstanding, therefore, partition of the agricultural land cannot be effected. In that process, vide order dated 13th June, 2003, the learned Naib Tehsildar directed the Patwari to file a report regarding the loan and bank mortgage; aggrieved by that order, the petitioner herein preferred the revision. The learned Collector and Revenue Board reached the conclusion that the petitioner has not been able to point any illegality in the order impugned. Moreover, the Revenue Board observed that the matter has already been delayed by the petitioner by raising frivolous objections and the matter is still pending since last 12 years, even then the matter has not been decided and the matter is pending for evidence of the petitioner. It is further directed that the Naib Tehsildar should proceed with the proceedings in the light of the order of the Revenue Board dated 21st August, 2002.

3. I have heard learned counsel for the petitioner on the question of admission. During the course of arguments, learned counsel for the petitioner was not able to point out any illegality or impropriety in the order challenged. At one stage, the petitioner himself has raised the point that the land in question has been mortgaged against the loan taken from the Bank for purchase of the tractor trolley. When the Naib Tehsildar asked the Patwari to ascertain from the Bank about the loan and the mortgage, and send his report regarding the objection raised by the petitioner, the petitioner has filed revision against that order. As has been held by the Hon'ble Apex Court in the matter of **Surya Dev Rai v. Ram Chander Rai and others** reported in **2003 AIR SCW 3872**,

> "the writ of certiorari is an exercise of its original jurisdiction by the High Court; exercise of supervisory jurisdiction is not an original jurisdiction. In exercise of supervisory jurisdiction the High Court may not only quash or set aside the impugned proceedings, judgment or order but it may also make such directions as the facts and circumstances of the case

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> may warrant, may be by way of guiding the inferior Court or Tribunal as to the manner in which it would now proceed further. Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate Courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has filed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction. The High Court cannot correct the mere errors of fact or of law unless (1) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (2) a grave injustice or gross failure of justice has occasioned thereby."

Same view has again been reiterated by the Apex Court in the matter of **Ranjeet Singh v. Ravi Prakash** reported in **2004 AIR SCW 4221**.

4. In the light of the above settled law, if we look into the petitioner's petition, the petitioner has not been able to make out a case of interference by this Court under the supervisory jurisdiction under Article 227 of the Constitution of India. The main grievance of the petitioner is against the order of the Naib Tehsildar dated 13.6.2003, whereby the Naib Tehsildar in the partition proceedings has asked for a report of the Patwari regarding the mortgage of the land in question and taking loan from the Bank for purchase of tractor trolley, in order to decide the points raised by the petitioner that action by the Naib Tehsildar was necessitated. Therefore, I do not find any illegality or impropriety or irregularity in the order impugned and the petitioner has not been able to make out a case for interference by this Court.

5. In the circumstances, the petition is dismissed in limine, at the admission itself.

Sd/-
L.C. Bhadoo
Judge

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